(73)

HIGH COURT OF JUDICATURE, CHHATTISGARH AT BILASPUR

Writ Petition No.2564 of 2003

PETITIONER: Bhorelal S/o Sri Amar Sai, aged about 56 years, Cat V Machinist, Regional Workshop, Korea (C.G.)

-Versus-

RESPONDENTS:

1. M/s South Eastern Coal Fields Limited, Through, The Chairman Cum Managing Director, Seepat Road, Bilaspur.

2. Dy. Chief Engineer (E & M) Regional Workshop, Korea, Chirmiri Area, Dist. Korea (C.G.).

POST FOR ORDER ON 5th DECEMBER, 2003

Sd/-
L.C. Bhadoo
Judge

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Petitioner by Smt. Meena Shastri, Advocate.

Respondents by Shri P. S. Nair, Senior Advocate with Shri Vinod Deshmukh, Advocate.

Before: Hon'ble Shri L.C. Bhadoo, J.

O R D E R

(Passed on 5th December, 2003)

1. The petitioner who is working as a Cat. V. Machinist under the control of the respondents has preferred this writ petition under Articles 226 & 227 of the Constitution of India, challenging the order Ex.P/10, retiring the petitioner w.e.f. 30th September 2003 considering date of birth of the petitioner as 4.9.1943.
2. The petitioner's case is that he was appointed as labour on 1.7.1977. In the year 1987 a letter carrying details of the service was issued to the petitioner directing him to fill up some vacant columns and thereafter to send the same back to the department. A copy of the same is enclosed as Annexure P/1. According to the column No. 6(i) the date of birth of the petitioner is

1.2.1947. The petitioner completed his primary education in the year 1960; a certificate to this effect is Annexure P/2. In the year 1963 the petitioner completed his middle education, certificates to this effect are Annexure P/3 and P/4. In these certificates the date of birth of the petitioner is shown as 1.2.1947. The petitioner also received training in Industrial Institute, Ambikapur from February 1965 to July 1966 and a certificate Annexure P/5 was issued in which also the date of birth of the petitioner is mentioned as 1.2.1947.

3. The petitioner made a representation on 7.11.1991 before the competent authority for correction of the wrong date of birth. A copy of the same is Annexure P/6. Again on 21.8.1998 he again made a representation for correction of date of birth but no positive steps were taken by the management. The petitioner again made a representation on 4.5.2001 which is Annexure P/8 and on 1.1.2002 which is Annexure P/9.

4. On 1.6.2003 the petitioner received a notice dated 1.6.2003 issued by the Respondent No.2, according to that notice it has been informed that the petitioner's date of birth is 4.9.1943 and he will be retiring on 30th September, 2003. Therefore the order of the respondent No.2 is illegal, contrary to the service record and the date of birth of the petitioner therefore the impugned order be quashed.

5. Return has been filed on behalf of the respondents in which it has been mentioned that the date of birth of the petitioner entered in the service record is 4.9.1943 which is evident from Annexure R/1 which bears the signature of the petitioner and same date of birth is also recorded in Annexure R/2 which also bears the signature of the petitioner. The matter

was sent to the age determination committee. In the year 1988 the age of the petitioner was determined as 45 years, and there are disputed facts therefore the writ petition does not lie and the document submitted by the petitioners are not reliable.

6. I have heard learned counsel for the parties.

7. During the course of arguments learned counsel for the petitioner submitted that the school certificates relating to the date of birth of the petitioners were not considered by the respondents and various representations were given by the petitioner but the respondents have not considered those representations. Therefore the action of the respondents is arbitrary and unreasonable.

8. During the course of argument it was suggested that the case of the petitioner be referred to the age determination committee of the respondents/department with the direction to consider all the documents submitted by the petitioner and to determine the age of the petitioner to which learned counsel for the respondents has no objection.

9. Therefore, having heard learned counsel for the parties and having regard to the facts and circumstances of the case, it is directed that the petitioner should make a detailed representation raising all his grievances and should also annex all the documents which are filed in support of this petition along with copy of the petition, and submit the same to the Respondent No.2 within a period of 15 days from today. The Respondent No.2 is directed to forward all the documents to the age determination committee and the age determination committee will consider all the documents furnished by the petitioner and if necessary the petitioner can be medically examined in order

to ascertain the age of the petitioner and give its decision within another 45 days from the date of receipt of the papers from the Respondent No.2. The decision given by the age determination committee shall be final and if the age determination committee give its finding in favour of the petitioner, then he will be allowed to continue in service in accordance with that age which may be determined by the age determination committee and further till the age is determined by the committee, petitioner will continue in the service.

10. With the above observations this petition is disposed of finally.

Sd/-
L.C. Bhadoo
Judge

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